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ABSTRACT

The estimates of employees who steal range from approximately 20 percent to 40 percent. While researchers are still attempting to quantify both the total frequency and cost of employee theft, the existence of meaningful amounts of theft by employees is widely accepted. Professionally developed pre-employment honesty tests do not appear to infringe upon the privacy rights of job applicants. Privacy issues are relevant to instrument selection, administrative procedures, accuracy of results, confidentiality and security, and groups with special concerns, such as minorities and unions. Honesty tests are one of many loss control programs that can help companies control their theft-related losses and better avoid negligent hiring lawsuits. Honesty tests need to be job relevant, appropriately administered, valid and fair. They should comply with all relevant legal and professional standards for psychological tests. Finally, many workplace privacy issues, such as inappropriate search and seizure, and wrongful discharge are not relevant to pre-employment honesty tests. Companies should make sure they use professionally developed and validated honesty tests. In an age where companies must control theft-related losses while at the same time avoiding privacy-related law suits, pre-employment honesty testing programs appear to be an acceptable strategy on both fronts. (ABL)

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Protecting Job Applicants' Privacy Rights when using Preemployment Honesty Tests

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Abstract

Preemployment honesty testing practices do not seem to infringe upon the workplace privacy rights of job applicants if professionally developed tests are selected, implemented and interpreted. Twenty-one privacy issues are reviewed, and practical strategies for addressing these issues are provided.

Protecting Job Applicants' Privacy Rights

when using Preemployment Honesty Tests

The estimates of employees who steal range from approximately 20% to 40%, depending upon the industry involved, survey methods used, and the theft criteria analyzed (cf., Hefter, 1986; Hollinger & Clark, 1983; Jones & Joy, 1989a). While researchers are still attempting to quantify both the total frequency and cost of employee theft, the existence of meaningful amounts of theft by employees is widely accepted.

Jones and Terris (1989) reviewed personnel selection programs employers can use to increase their odds of selecting applicants at lowest risk to steal. Most of the programs reviewed were used in place of preemployment polygraphs, which are now restricted in most contexts under the Employee Polygraph Protection Act of 1988. As shown in Table 1, selection programs differ on a number of dimensions including validity and usefulness.

Insert Table 1 Here

In recent years, the potential of paper-and-pencil honesty tests on job applicants' privacy right has been explored (Lehr & Middlebrooks, 1985). Since preemployment polygraphs were often viewed as invasive (Frierson, 1988), the concern exists as to whether or not paper-and-pencil honesty tests are invasive, too. This article briefly reviews the concept of the right to

Table 1

Major Types of On-the-Job Theft and Other Counterproductivity

- Theft of cash, merchandise, and property
- Misuse of discount privileges
- Damaging merchandise to buy it on discount
- Turnover for cause
- Using sick leave when not sick
- On-the-job illicit drug use
- Selling illicit drugs at work
- Chronic rule breaking
- Intentional damage and waste
- Vandalism
- Physical or verbal assault

workplace privacy. In addition, practical steps that companies can take to ensure that their honesty testing program does not infringe upon job applicants' privacy rights are described.

The Right to Privacy

There are three major sources of workplace privacy rights: (1) common law torts, (2) the U.S. Constitution and federal statutes, and (3) state constitutions and laws. The main task confronting employers is to determine which privacy rights have been recognized and protected, and how they apply to honesty testing in the workplace (cf., Shepard & Dutson, 1987; Decker, 1987, 1989). Common law torts serve to protect applicants against unreasonably intrusive selection programs and any adverse publicity that could place an applicant in a "false light" before the public. Honesty testing programs should clearly be job relevant and procedures for ensuring the confidentiality of applicants' completed test booklets and score reports should be implemented.

Although the U.S. Constitution does not have specific language providing a right to privacy, the courts have added such a right primarily from the First, Fourth, Fifth, Ninth, and Fourteenth Amendments. For example, the Fourth Amendment offers protection against unreasonable searches and seizures. Asking job applicants to complete a professionally developed paper-and-pencil honesty test does not appear to be a "search and seizure" in the same way that searching a person's locker or taking a urine or blood

sample for a drug test are construed as searches. The Fifth Amendment's self-incrimination clause, relating primarily to criminal cases, protects a person accused of a crime from being forced to be a witness against himself. This clause is not applicable to private sector preemployment testing programs that determine worker suitability for employment.

Finally, state constitutions and laws provide additional rights and protections against intrusions into personal privacy. One state, Massachusetts, has a law prohibiting the use of any measure of honesty (O'Bannon, Goldinger & Appleby, 1989). Companies in Massachusetts concerned about controlling employee theft must substitute tests that measure "dependability" for tests that clearly assess an applicant's risk for theft. Unfortunately, research to date suggests that measures of dependability do not predict theft as accurately as clear-purpose measures of honesty (Rafilson & Frost, 1989).

The remainder of this article describes how companies should select and use preemployment honesty tests so that they do not infringe upon job applicants' privacy rights. Current or prospective users of honesty tests should consult with personnel psychologists if they are confused with any of the following testing concepts and practices.

I. Instrument Selection

Four privacy issues are covered in this section. They primarily are concerned with the job relevancy and professional quality of preemployment honesty tests.

1. Job-relevance. Tests that measure attitudes toward job-related behaviors (e.g., attitudes toward theft) are less likely to be perceived as invasive compared to tests that ask questions about issues that are unrelated to the workplace (e.g., attitudes towards one's family). Honesty tests should be purchased primarily by organizations (e.g., retail stores, banks) that have a significant exposure to employee theft and other counterproductivity. Examples of major types of on-the-job theft and counterproductivity are listed in Table 2.

Insert Table 2 Here

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2. Standards for Honesty Testing. Professionally developed honesty tests should comply with the Standards for Educational and Psychological Testing (AERA, APA, NCME, 1985), and the Principles for the Validation and Use of Personnel Selection Procedures: Second Edition (Division of Industrial Organizational Psychology, 1980). These professional guidelines ensure that an employment test is job-relevant, valid, fair to protected minorities, and effective.

The Association of Personnel Test Publishers (1989) has published a set of standards that apply directly to preemployment honesty tests entitled, Professional and Ethical Guidelines for Preemployment Integrity Testing Programs. APTP's Model Guidelines are designed to provide guidance to those in charge of selecting, administering and basing personnel decisions on honesty tests. These guidelines can be

Table 2

Preemployment Screening Methods available to Business and Industry

Screening Method	Convenience issues	Main Problems	Main Advantages
Honesty Tests (a.k.a. Integrity Tests)	Can easily be made part of the usual screening procedure	Company representative(s) must be trained to appropriately use test scores Not all integrity tests are thoroughly validated	More validity evidence than other selection methods Not offensive No adverse impact (Meets EEOC guidelines) May discourage dishonest applicants from even applying
Selection Interview	Usually part of hiring procedure	No evidence of validity with theft criteria Difficult to determine applicant's truthfulness in discussing theft and counterproductivity	Inexpensive (already part of hiring procedures) Structured interviews show more promise than traditional interviews
Reference Checks	Often time consuming	Little evidence of validity Most misconduct is undetected Company reluctant to give negative information	May increase truthfulness of applicants Verifies information provided on application form and resumes
Criminal Background Checks	Typically provided by vendors, yet lengthy turnaround of results occurs	Not all criminals are on record Information obtained must be job relevant	Very complete and verifiable data can be obtained if available

Cont'd

Table 2 Cont'd

Preemployment Screening Methods available to Business and Industry

Screening Method	Convenience issues	Main Problems	Main Advantages
Credit Checks	Quick but somewhat costly	Relevance to theft not clear May not meet EEOC guidelines	Obtains information relevant to financial need and fiscal responsibility
Graphology	Faddish Complicated scoring procedures exist	No evidence of validity against theft or any criteria when controlling for content Difficult to standardize	None identified

(Adapted from Jones and Terris, 1989)

followed to ensure that both test publishers and test users adhere to effective and ethical testing practices in the following areas: (1) test development and selection; (2) test administration; (3) scoring, interpretation, and accuracy; (4) test fairness and confidentiality; and (5) public statements and test marketing practices.

3. Impermissible Questions. Companies should make sure that only legally permissible questions are included in any preemployment honesty test they choose (Ash, 1989). The questions typically asked in honesty test are job-related, and assess applicants' attitudes toward on-the-job theft and/or counterproductivity.

4. Selection Alternatives. To date, preemployment honesty tests appear to be one of the most reliable, valid and fair assessment instruments for selecting employees at lowest risk to steal (cf., Jones & Terris, 1989). This claim is based in part on recent reviews of both published and unpublished research (e.g., McDaniel & Jones, 1988; Sackett & Harris, 1985; Sackett, Burris, & Callahan, 1989). Companies should closely scrutinize the validation research for any selection procedure they intend to use.

II. Administrative Procedures

Six privacy issues are covered in this second section. They primarily deal with test administration practices and perceived offensiveness of honesty tests.

5. Test Administration Guidelines. Only properly trained and supervised company representatives should administer and use preemployment honesty tests. Personnel Psychologists can be consulted to help establish procedures for proper test use.

6. Offensiveness. A number of independent research studies reveal that the vast majority of people are not offended at having to take a preemployment honesty test, nor do they feel that the test is an invasion of privacy (cf., Jones & Joy, 1989b; Ryan & Sackett, 1987). Applicants should reasonably expect that companies with theft exposures have a responsibility to establish a highly reliable workforce at lowest risk to steal.

7. Informed Consent. Applicants should be required to sign an informed consent form acknowledging that they have carefully read the instructions and authorize the test publisher and/or employer to review and evaluate their answers and make these answers known to appropriate parties. Applicants should be informed that the preemployment honesty test is merely one part of an overall personnel selection program.

8. Random and Unannounced Testing. All applicants for a particular job should be required to undergo the same screening procedures. Random and inconsistent preemployment testing practices should always be avoided.

9. Inappropriate Search and Seizure. Paper-and-pencil honesty tests are not to be confused with any assessment procedure that involves a search and seizure process (e.g., urinalysis and blood testing). Honesty tests are paper-and-pencil inventories used for assessing job applicants' propensity for on-the-job theft and other counterproductivity.

10. Harrassment of Applicants. Test administrators should be trained to administer honesty tests in a quiet and comfortable test taking environment. All applicants should be treated with utmost respect. Only properly trained and qualified staff should administer and use the test.

III. Accuracy of Results

This third section presents four privacy issues. They deal with overall accuracy of the test and the impact of the testing program on theft-related losses.

11. Accuracy of Results. Job applicants who share information with prospective employers have a right to ensure that their test answers are accurately collected, entered into a scoring service, interpreted, and stored. Honesty tests typically are computer-scored tests, ensuring a high degree of scoring accuracy (cf., Werner, 1989). Test publishers usually assume the responsibility of accurately scoring the honesty tests.

12. Classification Errors. The most valid honesty tests should be used so that the very lowest level of some classification errors occurs. Company personnel need to be taught that classification errors exist with any personnel selection procedure (e.g., application blanks, interviews, background checks, work simulations) and therefore applicants should never be labeled as being "dishonest" or "counterproductive" if they score below standards. Martin (1989) found that classification errors for honesty tests were substantially lower than the errors estimated for the traditional employment interview, the biographical data blank, and random selection (i.e., no formal screening procedure used). All else being equal, classification errors are always lower with the most valid selection procedure, and research to date indicates that honesty tests are currently the most accurate predictor of employee theft potential.

13. Confirmation Testing. When screening for honesty, companies should be encouraged to use honesty tests as only one part of their overall personnel selection process. For example, companies can assess applicants' integrity using honesty tests, structured interviews, and reference or criminal background checks. Any discrepancies in information obtained can then be closely analyzed and additional information can be obtained. Over-reliance on honesty test results should be discouraged.

14. Document Impact on Losses. If a professionally developed honesty test is implemented, theft-related losses should go down or at least be lower than a comparable location or store that does not use honesty tests. If a company can provide evidence that an honesty testing program is effective, then it is very difficult to challenge the business necessity of the program (cf., Werner, Joy & Jones, 1989).

IV. Confidentiality and Security

This fourth section covers three privacy issues. They are primarily related to ensuring confidentiality of applicants' scores and security of test booklets and scoring keys.

15. Access to Test Scores. Test booklets and test scores should always be treated as confidential information. Designated company representatives should have access to an applicant's test scores only on a "need to know" basis. The scores should not be made public for any reason. Used test booklets, answer sheets, and test reports should be secured with other sensitive personnel information.

16. Public Disclosure of Test Scores. Employers administering honesty tests should not share test results with any of the applicants' past employers, nor with any other company where the applicants are, or will be, applying for work. An employer who divulges information about an applicant (e.g., "Mr. X failed our honesty test") to another company, for example, could be exposed to a defamation suit (i.e., libel or slander).

17. Test and Scoring Key Security. Companies using honesty testing programs should keep the unused honesty test booklets and the test scoring software or templates locked up at all times. This prevents applicants from unfairly having access to the honesty test before they are supposed to take it. Many honesty test publishers have a proprietary scoring key in order to both ensure the security of the scoring system and to assume the professional responsibilities involved with scoring and interpreting a psychological test.

V. Groups with Special Concerns

This final section addresses the privacy issues of four special interest groups. Issues relevant to both test users and test takers are reviewed.

18. Negligent Hiring. Employers may be held liable for negligently hiring employees who prove to be dangerous or dishonest workers. The tort of negligent hiring addresses the risk created by exposing both members of the public and other employees to a potentially dangerous or counterproductive individual. Many companies use honesty tests to reduce their exposure to negligent hiring claims.

19. Disparate Impact on Minorities. Based on the Equal Employment Opportunity Commission's guidelines (1978), honesty tests have consistently shown no adverse impact against any protected minority group. Published research supports this claim (e.g., Terris & Jones, 1982; Sackett, Burris, & Callahan, 1989). Companies typically conduct on-going

adverse impact studies to repeatedly document the fairness of the honesty testing program to all protected minority groups.

20. Discharging Dishonest Employees. This is not an issue for preemployment honesty tests since preemployment tests are only used with job applicants. Wrongful discharge lawsuits are not relevant with preemployment selection instruments.

21. Unions. Preemployment honesty tests are administered to job applicants and not to current employees. Hence, in most industries, the majority of applicants are not members of a union before hire. Whenever appropriate, however, companies using preemployment honesty tests should seek input from the Union on how to best implement the testing program. One must remember that unions also want to ensure that the workforce is not endangered or distressed by the hiring of dishonest or counterproductive employees.

Summary

Professionally developed preemployment honesty tests do not appear to infringe upon the privacy rights of job applicants. Twenty-one privacy issues were reviewed, and strategies for ensuring that honesty testing is an acceptable loss control procedure were furnished. Honesty tests are one of many loss control programs that can help companies control their theft-related losses and better avoid negligent hiring lawsuits. Honesty tests need to be job relevant, appropriately administered, valid and fair. They should comply with

all relevant legal and professional standards for psychological tests. Finally, many workplace privacy issues (e.g., inappropriate search and seizure, wrongful discharge, random and unannounced testing) are not relevant to preemployment honesty tests.

Companies should make sure they use professionally developed and validated honesty tests, and not "overnight" tests that might have been developed by companies trying to capitalize on the demise of the polygraph. The paper-and-pencil honesty testing industry spans more than 40 years (Ash, 1988), and there are a number of psychological test publishers that market professionally developed honesty tests that are scientifically sound. In an age where companies must control theft-related losses while at the same time avoiding privacy-related law suits, preemployment honesty testing programs appear to be an acceptable strategy on both fronts.

References

American Educational Research Association, American Psychological Association, and National Council on Measurement in Education. (1985). Standards for educational and psychological testing. Washington, D.C.: American Psychological Association.

Ash, P. (1988). A history of honesty testing. Paper presented at the 96th Annual Convention of the American Psychological Association, Atlanta, Georgia, August 13.

Ash, P. (1989). The Legality of preemployment inquiries. Park Ridge, IL: London House, Inc.

Association of Personnel Test Publishers (1989). Model guidelines for pre-employment integrity testing programs. Washington, D.C.: Author.

Decker, K.H. (1987). Employee privacy law and practice. New York, NY: John Wiley & Sons.

Decker, K.H. (1989). Employee privacy law and practice. (1989 Supplement). New York, NY: John Wiley & Sons.

Division of Industrial-Organizational Psychology. (1980). Principles for the validation and use of personnel selection procedures: Second edition. Berkeley, CA: American Psychological Association.

Employee Polygraph Protection Act of 1988. (1988). Public Law No. 100-347.

Equal Employment Opportunity Commission. (1978). Adoption of four agencies of uniform guidelines on employee selection procedures. Federal Register, 43, 38290-38315.

Frierson, J.G. (1988). The new federal polygraph law's impact on business. Commerce, Fall Issue, 70-71.

Hefter, R. (1986). The crippling crime. Security World, 23, 36-38.

Hollinger, R., & Clark, J. (1983). Theft by employees. Lexington, MA: Lexington Books.

Jones, J.W. & Joy, D.S. (1989a). Employee deviance base rates: A summary of empirical research. Submitted for publication.

Jones, J.W., & Joy, D.S. (1989b). Empirical investigation of job applicants' reactions to taking a preemployment honesty test. Paper presented at the Annual Conference of the American Psychological Association, New Orleans, August 12-15.

Jones, J.W., & Terris, W. (1989). After the polygraph ban: Selection alternatives to preemployment polygraph. Recruitment Today, May/June Issue, 25-31.

Lehr, R.L. & Middlebrooks, D.J. (1985). Workplace privacy issues and employer screening policies. Employee Relations Law Journal, 11, 407-421.

Martin, S.L. (1989). Estimating the false positive rate for alternative measures of integrity. Technical Report. Park Ridge, IL: London House, Inc.

McDaniel, M.A., & Jones, J.W. (1988). Predicting employee theft: A quantitative review of a standardized measure of honesty. Journal of Business and Psychology, 2, 327-345.

O'Bannon, R.M., Goldinger, L.A., & Appleby, G.S. (1989). Honesty and integrity testing: A practical guide. Atlanta, GA: Applied Information Resources.

Raflson, F.M., & Frost, A.G. (1989). Overt integrity tests versus personality-based measures of delinquency: An empirical comparison. Journal of Business and Psychology. 3 (3), 269-277.

Ryan, A.M., & Sackett, P.R. (1987). Preemployment honesty testing: Fakability, reactions of test takers, and company image. Journal of Business and Psychology, 1, 248-256.

Sackett, P.R. & Harris, M.E. (1985). Honesty testing for personnel selection: A review and critique. In H. John Bernadin and David A. Bownas (Eds.), Personality Assessment in Organizations. New York, NY: Praeger.

Sackett, P.R., Burris, L.R. & Callahan, C. (1989). Integrity testing for personnel selection: an update. Personnel Psychology, 41, 421-429.

Shepard, I.M., & Dutson, R.L. (1987). Workplace privacy: Employee testing, surveillance, wrongful discharge, and other areas of vulnerability. Washington, D.C.: Bureau of National Affairs.

Terris, W., & Jones, J.W. (1982). Psychological factors related to employee theft in the convenience store industry. Psychological Reports, 51, 1219-1238.

Werner, S. (1989). Reliability of the London House, Inc. Immediate Test Analysis by Computer (ITAC) Data Entry System. Technical Report. Park Ridge, IL: London House Press.

Werner, S., Joy, D.J., & Jones, J.W. (1989). Improving corporate profitability with preemployment integrity tests. Technical Report. Park Ridge, IL: London House, Inc.